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April 1, 2005

Mark D. Shonkwiler, Esq.  
Peter G. Blumberg, Esq.  
Office of General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
2005 APR -1 P 4: 51

Re: MUR 5183

Dear Messrs. Shonkwiler and Blumberg:

Pursuant to your letter of March 17, 2005, enclosed please find responses on behalf of the Democratic Senatorial Campaign Committee, the Democratic Congressional Campaign Committee and their respective treasurers in their official capacities to the Commission's finding of reason to believe in MUR 5183. These responses include briefs in opposition to the Commission's findings, affidavits from DSCC and DCCC staff regarding the donations in question, and – in the case of the DCCC – documents responsive to the Commission's subpoena.

As we have discussed before, a number of circumstances impair the ability of the DSCC and DCCC to develop facts and locate documents relevant to this matter, the facts of which occurred nearly five years ago. These include almost complete turnovers among committee staff, headquarters relocations that occurred for both committees after the 2002 elections, and the maintenance of a large quantity of documents in offsite storage. The responses submitted today, together with the documents produced previously, reflect the committees' best efforts to adduce the information requested by the Commission. To the extent the committees prove able to develop additional responsive documents or information, they will produce them to the Commission.

We understand from my conversation with you on March 17 that the General Counsel continues to review the concerns we expressed on behalf of our clients in our

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Perkins Coie LLP and Affiliates

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February 24, 2005, meeting. We hope that a full review of those concerns and due consideration of these responses will lead the Commission to a prompt dismissal of this matter.

If you have any questions, please do not hesitate to contact me at (202) 434-1654.

Very truly yours,



Brian G. Svoboda

Enclosures

cc (copies of briefs):

Chairman Scott E. Thomas  
Vice Chairman Michael Toner  
Commissioner David M. Mason  
Commissioner Danny Lee McDonald  
Commissioner Bradley A. Smith  
Commissioner Ellen Weintraub  
Lawrence H. Norton, Esq.

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COUNSEL  
2005 APR - 1 1 P 4: 57

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
)  
Democratic Senatorial Campaign Committee ) MUR 5183  
and J.B. Poersch, in his official capacity )  
as treasurer )

**RESPONDENT DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE'S  
OPPOSITION TO THE COMMISSION'S FINDING OF REASON TO BELIEVE**

**INTRODUCTION**

Respondents Democratic Senatorial Campaign Committee and J.B. Poersch, in his official capacity as treasurer<sup>1</sup> (collectively, "Respondents" or "the DSCC") submit this brief in response to the Commission's finding of reason to believe in the above-referenced matter.

This finding arose from irregular – indeed, arbitrary – circumstances. In an investigation directed at others, the Commission through counsel subpoenaed information from the DSCC, while informing the committee that it was a witness only and not a respondent. To obtain the information voluntarily, the Commission negotiated a voluntary production in lieu of compliance with the DSCC. Then, relying on the same facts that led it to treat the DSCC initially as a non-respondent witness, the Commission found reason to believe that the DSCC had violated the Act, and restored the original subpoena.<sup>2</sup>

The Factual and Legal Analysis arbitrarily discounts information that demonstrates the absence of a violation. First, the DSCC provided the funds under the express condition that they be used "for charitable purposes and may not be used in connection with any partisan political activities." Second, the recipient of its funds was a charity organized under Section 501(c)(3) of the Internal Revenue Code, and accordingly was prohibited from conducting partisan voter drive activities. The Factual and Legal Analysis dismisses the significance of the first fact in a footnote,

<sup>1</sup> David Rudd, named as a respondent in his official capacity as treasurer in the Commission's February 4, 2005 finding, was succeeded by J.B. Poersch as treasurer on January 11, 2005.

<sup>2</sup> Counsel to the DSCC presented their concerns about this process to the General Counsel in a February 24, 2005, meeting. From subsequent conversations with the General Counsel and other Commission attorneys, the DSCC understands that these concerns are being taken under advisement. In the meantime, the Office of General Counsel requested the DSCC to provide a substantive response to the finding by April 1, 2005, a request with which the DSCC has complied.

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citing unidentified "evidence suggesting that the DSCC was informed of the Jackson speaking tour ..." It does not address the second fact at all.

Moreover, the Commission's Factual and Legal Analysis discloses no factual basis for the finding. It alleges that the DSCC gave nonfederal funds to the Citizenship Education Fund, with the knowledge that the funds would be used to conduct allocable voter drive activities. Yet it presents no evidence that this was the case. It provides no evidence to suggest that the voter drive activities occurred in any targeted Senate race. It cites unnamed "evidence" suggesting that the DSCC was aware that the recipient was financing a partisan voter drive, but does not say what that evidence is. It says that a "tour coordinator" briefed "Democratic Party officials" about the voter drive activities, but acknowledges that she could not recall speaking with anyone at the DSCC. It says that the DSCC "may have assisted" with the conduct of the voter drive activities, but provides no basis for this assertion.

Because of the arbitrary circumstances that led to this finding, the presence of actual evidence contradicting it, and the thinness of support offered for it, the Commission should take no further action against the DSCC in this matter and immediately dismiss it from the complaint.

### DISCUSSION

This matter involves a legal issue that is purely historical – the circumstances under which a national party committee, before passage of the Bipartisan Campaign Reform Act of 2002, could use nonfederal funds to make donations to nonprofit organizations. The law then in place was silent on this question. Unlike BCRA, it imposed no restrictions on party donations to nonprofits. *See* 2 U.S.C. § 441i(d) (2004). *See also* Conciliation Agreement, MUR 3774 ¶ IV:14 ("The Federal Election Campaign Act does not, per se, prohibit the disbursement of non-federal funds by a party committee to non-party organizations.").

In 1998, a federal district court in California held that a state political party's donations to a ballot initiative committee, when made for the purpose of conducting a *partisan* voter drive, were subject to Commission allocation rules. *See Federal Election Commission v. California Democratic Party*, 13 F. Supp.2d 1031 (E.D. Cal. 1998), *mot. for summ. judgment granted*, 1999 WL 33633264, Civ. No. S-97-0891GEBPAN (E.D. Cal. Oct. 14, 1999).

The court relied on extensive evidence that the situation was "no different than if the [party] ... conducted the voter registration drive itself or hired someone to do so." 13 F. Supp.2d at

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1034. It relied on the fact that the party's funds were used by the ballot initiative committee for a voter registration drive "targeting Democrats and counting only Democratic registrants in their totals." *Id.* at 1033. The ballot initiative committee "provided weekly reports about the progress of the voter registration efforts" to the party committee's executive director. *Id.* The party committee gave \$719,000 to the ballot initiative committee, "nearly all of which was used to register Democratic voters." *Id.*

On similar facts, the Commission secured a conciliation agreement against the National Republican Senatorial Committee in MUR 3774. Significantly, the NRSC paid a civil penalty of only \$20,000 on spending of \$840,000, and did not admit any violation. *See Conciliation Agreement*, MUR 3774 ¶¶ IV: 16-24, V, VI. Yet like *California Democratic Party*, MUR 3774 involved allegations of targeted party committee soft money spending in particular races. *See id.* ¶¶ IV:15-28. The Commission identified specific activities supported by NRSC soft money transfers, the specific Senate elections in which they occurred, and the specific constituencies that they targeted. *See id.* ¶¶ IV:15-28. Some of the transfers occurred immediately before runoff and special elections, and were immediately followed by targeted voter mobilization efforts in those specific elections. *See id.* ¶¶ IV: 17-22.

This matter is distinguishable from *California Democratic Party* and MUR 3774. The facts demonstrate that the DSCC did not intend to support partisan political activity through soft money donations. The Factual and Legal Analysis presents no specific information to contradict these facts; it is opaque as to what precisely the DSCC would have paid for "itself or hired someone to do." *California Democratic Party*, 13 F. Supp.2d at 1034.

The Factual and Legal Analysis alleges that the Democratic National Committee agreed to provide two nonprofit organizations associated with the Reverend Jesse Jackson, the Citizenship Education Fund and the Rainbow/PUSH Coalition, with up to \$450,000 to offset the costs of a speaking tour to register voters and conduct get-out-the-vote activities. *See Factual and Legal Analysis* at 1-2. The DNC allegedly told Billy Owens, the chief financial officer of the Citizenship Education Fund and the Rainbow/PUSH Coalition, that the DSCC and DCCC would each provide \$100,000 toward this commitment. *See id.* at 2. The DSCC later donated \$100,000 from its nonfederal account to the Citizenship Education Fund, wiring \$40,000 on October 11, 2000, and

\$60,000 on October 26, 2000. The DCCC donated \$100,000 from its nonfederal account to the Rainbow/PUSH Coalition on November 8, 2000.

The facts demonstrate that the DSCC did not intend to support allocable, partisan activity through its donations to the Citizenship Education Fund. First, letters provided by the DSCC to the Citizenship Education Fund with each donation stated that the "donation is made for charitable purposes and may not be used in connection with any partisan political activities." *Id.* at 2 n.2. The Factual and Legal Analysis arbitrarily tries to discount the significance of the letters by citing unspecified "evidence suggesting the DSCC was informed of the Jackson speaking tour." *Id.* It provides no concrete reason to reject the DSCC's express, contemporaneous understanding of the transactions, and accept an alternative interpretation of events.

Second, the Citizenship Education Fund was a section 501(c)(3) charity, prohibited by federal tax law from intervening in a partisan election. The fact of the recipient's tax status was a strong sign to the DSCC that it could safely give nonfederal funds to the organization, notwithstanding the Court's holding in *California Democratic Party*. It was legally impossible for the organization to engage in the partisan voter drive activity that the Commission now contends occurred. Again, the Factual and Legal Analysis presents no concrete reason to suggest that the DSCC should have had a different understanding at the time.

Nearly five years after the facts in the matter transpired, and after an audit and an investigation of the other respondents, the Factual and Legal Analysis fails to show what the Citizenship Education Fund did with the DSCC's funds that the DSCC would have done "itself or hired someone to do." *California Democratic Party*, 13 F. Supp.2d at 1034. In stark contrast with *California Democratic Party* and MUR 3774, it identifies no targeted Senate race that the DSCC provided soft money to influence, or any specific Senate candidate who benefited from the spending. It shows no concrete utility to the DSCC from the spending undertaken by the Citizenship Education Fund.

Rather, the Factual and Legal Analysis tries to create the illusion of DSCC culpability, while failing to provide any real information to support it. For example:

- Despite access to DNC counsel and witnesses throughout the MUR and conciliation process, it presents no contacts between the DNC and the DSCC

regarding the alleged scheme.

- It says that Billy Owens contacted the DSCC "in September 2000 to finalize the arrangements for payment." *Id.* at 2. However, it does not say with whom Owens spoke, nor does it say whether Owens discussed the scheme with them.
- It says that during September 2000, a DNC employee coordinated the speaking tour and "provided briefings to Democratic Party officials," who participated in determining the schedule for the tour. *Id.* at 2-3. However, it acknowledges that the tour coordinator "could not recall whether any of her contacts worked for" the DSCC. *Id.* at 2 n.3.
- It says that the speaking tour involved many joint appearances with Reverend Jesse Jackson and "Democratic Party Senate and House candidates ..." *Id.* at 3. However, it identifies none of the Senate candidates who participated in these events.
- It says that the DSCC "may have assisted in arranging the candidates' participation," *id.* at 2 n.3, and that its payments were made while "participating in DNC Coordinated Campaign events with Reverend Jackson." *Id.* at 5. However, it states no facts to support these assertions.


The Commission's finding of reason to believe in this matter is a radical extension of the *California Democratic Party* holding – and, from a policy perspective, an unnecessary one, given that national party committees may no longer raise or spend soft money. The finding proposes liability for a an allocating committee that, prior to BCRA, donated nonfederal monies to a nonprofit as the law then allowed – without any suggestion of committee belief or knowledge that the monies would be used impermissibly for federal-election related purposes, and without any suggestion of intended or actual election-related benefit to the committee.

This is a departure from the *California Democratic Party* holding, where the defendant funded and directed activities that it undoubtedly would have conducted itself, knowing that it

would benefit concretely. It is a departure from MUR 3774, in which a national party committee gave nearly a million dollars in nonfederal funds to support specific voter mobilization activities in specific Senate races.

For the foregoing reasons, the DSCC respectfully requests the Commission to dismiss it from this matter while taking no further action.

Respectfully submitted,



Robert F. Bauer  
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(202) 628-6600

Attorneys for Respondents

Dated: April 1, 2005



BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )

Democratic Senatorial Campaign Committee )  
and J.B. Poersch, in his official capacity )  
as treasurer )

MUR 5183

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COUNSEL  
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**AFFIDAVIT OF DARLENE SETTER**

I, Darlene Setter, do depose and state as follows:


1. My name is Darlene Setter. I am the Custodian of Records of the Democratic Senatorial Campaign Committee ("DSCC"). I served in this capacity also during the 2000 election cycle. Through this position, I am familiar with the matters described herein.

2. In October 2000, the DSCC made donations aggregating \$100,000 to the Citizenship Education Fund. The DSCC made these donations understanding that the recipient was a charity prohibited from intervening in partisan elections.

3. The DSCC's normal procedure during 2000 was to provide, with each nonfederal donation, a letter setting forth its understanding regarding the manner in which the funds were to be used. To the best of my knowledge, the letters provided by the DSCC to the Citizenship Education Fund accurately reflected the DSCC's understanding of the circumstances surrounding its donations to that organization.

FURTHER AFFIANT SAYETH NOT.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 1, 2005.

  
\_\_\_\_\_  
Darlene Setter

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )

Democratic Congressional Campaign Committee )  
and John Lapp, in his official capacity )  
as treasurer )

MUR 5183

**RESPONDENT DEMOCRATIC CONGRESSIONAL CAMPAIGN COMMITTEE  
OPPOSITION TO THE COMMISSION'S FINDING OF REASON TO BELIEVE**

**INTRODUCTION**

Respondents Democratic Congressional Campaign Committee and John Lapp, in his official capacity as treasurer<sup>1</sup> (collectively, "Respondents" or "the DCCC") submit this brief in response to the Commission's finding of reason to believe in the above-referenced matter.

This finding arose from irregular – indeed, arbitrary – circumstances. In an investigation directed at others, the Commission through counsel subpoenaed information from the DCCC, while informing the committee that it was a witness only and not a respondent. To obtain the information voluntarily, the Commission negotiated a voluntary production in lieu of compliance with the DCCC. Then, relying on the same facts that led it to treat the DCCC initially as a non-respondent witness, the Commission found reason to believe that it had violated the Act, and restored the original subpoena.<sup>2</sup>

Here, the facts demonstrate the absence of a violation. First, the DCCC treated the donation for federal income tax purposes as non-election related activity, thus adversely affecting its tax liability. Second, the DCCC made the donation on Election Day, rendering improbable the notion that it was used to conduct voter drive activity.

<sup>1</sup> James Bonham, named as a respondent in his official capacity as treasurer in the Commission's February 4, 2005 finding, was succeeded by John Lapp as treasurer on January 25, 2005.

<sup>2</sup> Counsel to the DCCC presented their concerns about this process to the General Counsel in a February 24, 2005, meeting. From subsequent conversations with the General Counsel and other Commission attorneys, the DCCC understands that these concerns are being taken under advisement. In the meantime, the Office of General Counsel requested the DCCC to provide a substantive response to the finding by April 1, 2005, a request with which the DCCC has complied.

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The Commission's Factual and Legal Analysis discloses no factual basis for the finding. It alleges that the DCCC gave nonfederal funds to the Rainbow/PUSH Coalition, with the knowledge that the funds would be used to conduct allocable voter drive activities. Yet it presents no evidence that this was the case. It provides no evidence to suggest that the voter drive activities occurred in any targeted House race. It cites unnamed "evidence" suggesting that the DCCC was aware that Rainbow/PUSH was financing a partisan voter drive, but does not say what that evidence is. It says that a "tour coordinator" briefed "Democratic Party officials" about the voter drive activities, but acknowledges that she could not recall speaking with anyone at the DCCC. It says that the DCCC "may have assisted" with the conduct of the voter drive activities, but provides no basis for this assertion.

Because of the arbitrary circumstances that led to this finding, the presence of actual evidence contradicting it, and the thinness of support offered for it, the Commission should take no further action against the DCCC in this matter and immediately dismiss it from the complaint.

### DISCUSSION

This matter involves a legal issue that is purely historical – the circumstances under which a national party committee, before passage of the Bipartisan Campaign Reform Act of 2002, could use nonfederal funds to make donations to nonprofit organizations. The law then in place was silent on this question. Unlike BCRA, it imposed no restrictions on party donations to nonprofits. *See* 2 U.S.C. § 441i(d) (2004). *See also* Conciliation Agreement, MUR 3774 ¶ IV:14 ("The Federal Election Campaign Act does not, per se, prohibit the disbursement of non-federal funds by a party committee to non-party organizations.").

In 1998, a federal district court in California held that a state political party's donations to a ballot initiative committee, when made for the purpose of conducting a *partisan* voter drive, were subject to Commission allocation rules. *See Federal Election Commission v. California Democratic Party*, 13 F. Supp.2d 1031 (E.D. Cal. 1998), *mot. for summ. judgment granted*, 1999 WL 33633264, Civ. No. S-97-0891GEBPAN (E.D. Cal. Oct. 14, 1999).

The court relied on extensive evidence that the situation was "no different than if the [party] ... conducted the voter registration drive itself or hired someone to do so." 13 F. Supp.2d at 1034. It relied on the fact that the party's funds were used by the ballot initiative committee for a voter registration drive "targeting Democrats and counting only Democratic registrants in their

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totals." *Id.* at 1033. The ballot initiative committee "provided weekly reports about the progress of the voter registration efforts" to the party committee's executive director. *Id.* The party committee gave \$719,000 to the ballot initiative committee, "nearly all of which was used to register Democratic voters." *Id.*

On similar facts, the Commission secured a conciliation agreement against the National Republican Senatorial Committee in MUR 3774. Significantly, the NRSC paid a civil penalty of only \$20,000 on spending of \$840,000, and did not admit any violation. *See* Conciliation Agreement, MUR 3774 ¶¶ IV: 16-24, V, VI. Yet like *California Democratic Party*, MUR 3774 involved allegations of targeted party committee soft money spending in particular races. *See id.* ¶¶ IV:15-28. The Commission identified specific activities supported by NRSC soft money transfers, the specific Senate elections in which they occurred, and the specific constituencies that they targeted. *See id.* ¶¶ IV:15-28. Some of the transfers occurred immediately before runoff and special elections, and were immediately followed by targeted voter mobilization efforts in those specific elections. *See id.* ¶¶ IV: 17-22.

This matter is distinguishable from *California Democratic Party* and MUR 3774. The facts demonstrate that the DCCC did not intend to support partisan political activity through its donation to Rainbow/PUSH. The Factual and Legal Analysis presents no specific information to contradict these facts; it is opaque as to what precisely the DCCC would have paid for "itself or hired someone to do." *California Democratic Party*, 13 F. Supp.2d at 1034.

The Factual and Legal Analysis alleges that the Democratic National Committee agreed to provide two nonprofit organizations associated with the Reverend Jesse Jackson, the Citizenship Education Fund and the Rainbow/PUSH Coalition, with up to \$450,000 to offset the costs of a speaking tour to register voters and conduct get-out-the-vote activities. *See* Factual and Legal Analysis at 1-2. The DNC allegedly told Billy Owens, the chief financial officer of the Citizenship Education Fund and the Rainbow/PUSH Coalition, that the DSCC and DCCC would each provide \$100,000 toward this commitment. *See id.* at 2. The DSCC later donated \$100,000 from its nonfederal account to the Citizenship Education Fund, wiring \$40,000 on October 11, 2000, and \$60,000 on October 26, 2000. The DCCC donated \$100,000 from its nonfederal account to the Rainbow/PUSH Coalition on November 8, 2000.

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S E E T P O S T

The facts demonstrate that the DCCC did not intend to support allocable, partisan activity through its donation to Rainbow/PUSH. First, as the documents produced with this response demonstrate, the DCCC treated the donation as a non-election-related expenditure for tax purposes, adversely affecting its own tax liability. As a political organization described in Section 527 of the Internal Revenue Code, the DCCC is exempt from taxation to the extent that it raises and spends funds to influence elections. The practice of the DCCC in 2000 was to treat charitable donations as non-exempt spending subject to tax. The DCCC regarded the Rainbow/PUSH donation in this manner, thus belying the notion that it intended the donation to be used to conduct partisan voter drive activities.<sup>3</sup>

Moreover, the DCCC made the donation on Election Day itself. This fact demonstrates further that the funds were not provided for the purpose of conducting voter drive activity; it is hard to contend that the Rainbow/PUSH Coalition did something with the DCCC's funds that the DCCC would have done "itself or hired someone to do." *California Democratic Party*, 13 F. Supp.2d at 1034. The Factual and Legal Analysis presents no commitment from the DCCC to reimburse the Rainbow/PUSH Coalition if it conducted voter drive activities on its behalf, and the DCCC made no such commitment.

Nearly five years after the facts in the matter transpired, and after an audit and an investigation of the other respondents, the Factual and Legal Analysis fails to present clear facts to show a violation. In stark contrast with *California Democratic Party* and MUR 3774, it identifies no targeted House race that the DCCC provided soft money to influence, or any specific House candidate who benefited from the spending. It presents no knowledge on the part of the DCCC as to where the activities were to be conducted, and thus no clear benefit to Democratic House candidates. It shows no concrete utility to the DCCC from the spending undertaken by Rainbow/PUSH.

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<sup>3</sup> The DCCC's internal check request form, located by the DCCC in document review conducted subsequent to the Commission's reason to believe finding, describes the transaction as a "donation" made for "voter education" purposes. The description of the transaction as a "donation" further affirms the DCCC's understanding of the matter – that it was supporting the general activities of a nonprofit organization. The reference to "voter education" corresponds to the character of the recipient organization. It does not signify partisan voter drive activity; to the contrary, it connotes a nonpartisan focus.

Rather, the Factual and Legal Analysis tries to create the illusion of DCCC culpability, while failing to provide any real information to support it. For example:

- Despite access to DNC counsel and witnesses throughout the MUR and conciliation process, it presents no contacts between the DNC and the DCCC regarding the alleged scheme.
- It says that Billy Owens contacted the DCCC "in September 2000 to finalize the arrangements for payment." Factual and Legal Analysis at 2. However, it does not say with whom Owens spoke, nor does it say whether Owens discussed the alleged scheme with them.
- It says that during September 2000, a DNC employee coordinated the speaking tour and "provided briefings to Democratic Party officials," who participated in determining the schedule for the tour. *Id.* at 2. However, it acknowledges that the tour coordinator "could not recall whether any of her contacts worked for" the DCCC. *Id.* at 3 n.2.
- It says that the speaking tour involved many joint appearances with Reverend Jesse Jackson and "Democratic Party Senate and House candidates ..." *Id.* at 3. However, it identifies none of the House candidates who participated in these events.
- It says that the DCCC "may have assisted in arranging the candidates' participation," *id.* at 3 n.2, and that its payments were made while "participating in DNC Coordinated Campaign events with Reverend Jackson." *Id.* at 5. However, it states no facts to support these assertions.

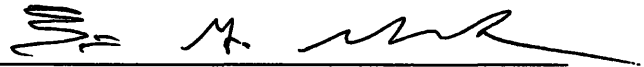
The Commission's finding of reason to believe in this matter is a radical extension of the *California Democratic Party* holding – and, from a policy perspective, an unnecessary one, given that national party committees may no longer raise or spend soft money. The finding proposes

liability for a an allocating committee that, prior to BCRA, donated nonfederal monies to a nonprofit as the law then allowed – without any suggestion of committee belief or knowledge that the monies would be used impermissibly for federal-election related purposes, and without any suggestion of intended or actual election-related benefit to the committee.

This is a departure from the *California Democratic Party* holding, where the defendant funded and directed activities that it undoubtedly would have conducted itself, knowing that it would benefit concretely. It is a departure from MUR 3774, in which a national party committee gave nearly a million dollars in nonfederal funds to support specific voter mobilization activities in specific Senate races.

For the foregoing reasons, the DCCC respectfully requests the Commission to dismiss it from this matter while taking no further action.

Respectfully submitted,



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Judith L. Corley  
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Attorneys for Respondents

Dated: April 1, 2005

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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of

Democratic Congressional Campaign Committee  
and John Lapp, in his official capacity  
as treasurer

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MUR 5183

**AFFIDAVIT OF JACQUELINE FORTE-MACKAY**

I, Jacqueline Forte-Mackay, do depose and state as follows:

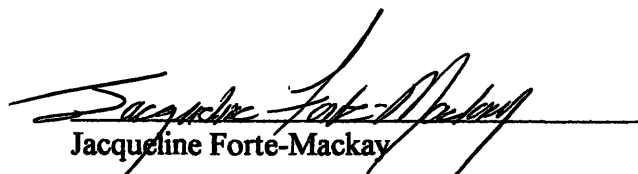
1. My name is Jacqueline Forte-Mackay. I am the Controller and Secretary of the Democratic Congressional Campaign Committee ("DCCC"). I served in these capacities also during the 2000 election cycle. Through these positions, I am familiar with the matters described herein.

2. On or about November 8, 2000, the DCCC made a donation of \$100,000 to the Rainbow/PUSH Coalition. The DCCC made this donation understanding that the recipient was a nonprofit social welfare organization. The DCCC understood that its funds would be used to support the recipient's general, nonpartisan activities and not for any specific partisan political purpose.

3. The DCCC understood that the donation was made for a non-exempt function under Section 527 of the Internal Revenue Code. Accordingly, when the DCCC prepared and filed Form 1120-POL for calendar year 2000, it treated the donation as a non-exempt function expenditure on Line 7 of its return.

FURTHER AFFIANT SAYETH NOT.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 1, 2005.

  
Jacqueline Forte-Mackay